

## Chapter 13

### LEASE TERMINATIONS

#### INTRODUCTION

Either party to the dwelling lease agreement may terminate the lease in accordance with the terms of the lease. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program. The PHA has the authority to terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations also specify when termination of the lease is mandatory by the PHA.

When determining PHA policy on terminations of the lease, the PHA must consider state and local landlord-tenant laws in the area where the PHA is located. Such laws vary from one location to another, and these variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern voluntary termination of the lease by the family and the mandatory and voluntary termination of the lease by the PHA. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the PHA requirements for voluntary termination of the lease by the family.

Part II: Termination by PHA - Mandatory. This part describes circumstances when termination of the lease by the PHA is mandatory. This part also explains nonrenewal of the lease for noncompliance with community service requirements and families that have been over the income limit for 24 consecutive months.

Part III: Termination by PHA – Other Authorized Reasons. This part describes the PHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes PHAs to terminate. For some of these options HUD requires the PHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the PHA has full discretion whether to consider the options as just cause to terminate as long as the PHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the PHA may consider in lieu of termination, and the criteria the PHA will use when deciding what actions to take.

Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and PHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

## **PART I: TERMINATION BY TENANT**

### **13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]**

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the property management office or sent by pre-paid first-class mail, properly addressed.

#### COC Policy

**If a family desires to move and terminate their tenancy with COC, they must give at least 15 calendar days advance written notice to COC of their intent to vacate.**

**The notice of lease termination must be signed by the head of household, spouse, co head, and other adult members.**

## **PART II: TERMINATION BY COC – MANDATORY**

### **13-II.A. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]**

COC must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

### **13-II.B. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]**

COC must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by COC, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

See Chapter 7 for a complete discussion of documentation requirements.

### **13-II.C. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2010-3]**

COC must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and COC determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, COC may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date COC determined the family to be noncompliant.

## COC Policy

**COC will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.**

See Chapter 7 for a complete discussion of documentation and certification requirements.

### **13-II.D. FAILURE TO ACCEPT COC'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]**

COC must terminate the lease if the family fails to accept COC's offer of a lease revision to an existing lease, provided COC has done the following:

- The revision is on a form adopted by COC in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- COC has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- COC has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to COC policies for offering lease revisions.

### **13-II.E. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]**

COC must immediately terminate the lease if COC determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

See Part 13-III.B. below for the HUD definition of *premises*.

### **13-II.F. LIFETIME REGISTERED SEX OFFENDERS [Notice PIH 2012-28]**

Should COC discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, COC must immediately terminate assistance for the household member.

In this situation, COC must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, COC must terminate assistance for the household.

**13-II.G. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

COC is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

**13-II.H. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2012-10]**

COC must immediately terminate the lease following the death of the sole family member.

**13-II.J. OVER INCOME FAMILIES [24 CFR 960.507; FR Notice 7/26/18; Notice PIH 2019-11; FR Notice 2/14/23]**

In the public housing program, an *over-income family* is defined as a family whose income exceeds the over-income limit for 24 consecutive months. When this occurs, the PHA must either:

- Terminate the family’s tenancy within six months of the PHA’s final notification of the end of the 24-month grace period; or
- Within 60 days of the PHA’s final notification of the end of the 24-month grace period or the next lease renewal (whichever is sooner), have the family execute a new lease that is consistent with 24 CFR 960.509 and charge the family a monthly rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the operating and capital funds.

The PHA must establish a continued occupancy policy for over-income families in the ACOP indicating which of the above will occur.

COC Policy

For families whose income exceeds the over-income limit for 24 consecutive months, COC will not terminate the family’s tenancy and will charge the family the alternative non-public housing rent, as well as require the family to sign a new non-public housing lease in accordance with the continued occupancy policies below.

**Over-Income Limit [Notice PIH 2019-11]**

The PHA must publish over-income limits in their ACOP and update them no later than 60 days after HUD publishes new income limits each year. The over-income limit is calculated by multiplying the very low-income limit (VLI) by 2.4, as adjusted for family size.

COC Policy

COC will rely on the following over-income limits. These numbers will be updated within 60 days of HUD publishing new income limits each year and will be effective for all annual and interim reexaminations once these policies have been adopted.

<b>Family Size</b>	1	2	3	4	5	6	7	8
<b>Over-Income Limit</b>	75,750	86,550	97,350	108,150	116,850	125,500	134,150	142,800

For families larger than eight persons, the over-income limit will be calculated by multiplying the applicable very low-income limit by 2.4.

#### **Decreases in Income [24 CFR 960.507(c)(4)]**

If, at any time during the consecutive 24-month period following the initial over-income determination, the PHA determines that the family's income is below the over-income limit, the PHA's over-income policies no longer apply to the family. If the PHA later determines that the family's income exceeds the over-income limit at a subsequent annual or interim reexamination, the family is entitled to a new 24 consecutive month period and new notices under this section.

##### COC Policy

If, at any time during the 24-month period following the initial over-income determination, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with COC's policy in Chapter 9.

If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. COC will notify the family in writing within 10 business days of the determination that over-income policies no longer apply to them.

#### **Initial Notice of Over-Income Status [24 CFR 960.507(c)(1)]**

If the PHA determines the family has exceeded the over-income limit during an annual or interim reexamination, the PHA must provide written notice to the family of the over-income determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit and continuing to do so for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit.

##### COC Policy

At annual or interim reexamination, if a family's income exceeds the applicable over-income limit, within 10 business days COC will notify the family in writing of the determination and that if the family continues to be over-income for 24 consecutive months, the family will be subject to COC's over-income policies. The notice will state that the family may request a hearing if the family disputes COC's determination in accordance with COC policies in Chapter 14.

#### **Second Notice of Over-Income Status [24 CFR 960.507(c)(2)]**

The PHA must conduct an income examination 12 months after the initial over-income determination, unless the PHA determined the family's income fell below the over-income limit since the initial over-income determination. If the PHA determines the family continues to exceed the over-income limit for 12 consecutive months, the PHA must provide written notification of this 12-month over-income determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 12 consecutive months and continuing to do so for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families. Additionally, if applicable under PHA policy, the notice must include an estimate (based on current data) of the

alternative non-public housing rent for the family's unit. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit.

#### COC Policy

If a family's income exceeds the applicable over-income limit after 12 consecutive months, within 10 business days, COC will notify the family in writing of the determination and that if the family continues to be over-income for 24 consecutive months, the family will be subject to COC's over-income policies. The notice will provide an estimate of the alternative non-public housing rent applicable to the family at the close of the 24 consecutive month period. The notice will also state that the family may request a hearing if the family disputes COC's determination in accordance with COC policies in Chapter 14.

#### **Final Notice of Over-Income Status [24 CFR 960.507(c)(3) and 960.509]**

Unless the PHA determined the family's income fell below the over-income limit since the second over-income determination, the PHA must conduct an income examination 24 months after the initial over income determination. If the family continues to be over-income based on this determination, the PHA must provide written notification of this determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 24 consecutive months and that the PHA will follow its continued occupancy policies for over-income families. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit.

#### COC Policy

If a family's income exceeds the applicable over-income limit for 24 consecutive months, COC will notify the family in writing of the determination within 10 business days of the date of the determination. The notice will state that the family will be charged the alternative non-public housing rent in accordance with COC's continued occupancy policies and HUD regulations and provide the family's new rent amount.

The notice will also include a new non-public housing lease and inform the family that the lease must be executed by the family and COC no later than 60 days from the date of the notice or at the next lease renewal, whichever is sooner. The family will continue to be a public housing program participant until the family executes the new non-public housing lease. The notice will also state that failure to execute the lease within this time period stated in the notice will result in termination of tenancy no more than six months after the date of the notice. COC will permit an over-income family to execute a lease beyond this time period, but before termination of tenancy, if the over-income family pays COC the total difference between the alternative non-public housing rent and their public housing rent dating back to the point in time that the over-income family was required to execute the new lease.

Once the family signs the new non-public housing lease, the family will no longer be a public housing participant family. The family will no longer be subject to income examinations, are precluded from participating in the resident council, and cannot participate in any programs that are only for public housing or low-income families.

The non-public housing over-income lease will contain all required provisions listed at 24 CFR 960.509. The initial term of the lease will be for one year. Upon expiration of the initial lease term, the lease will not renew automatically, and subsequent leases will state renewal terms. At any time, COC may terminate tenancy in accordance with 24 CFR 960.509(b)(11) and in accordance with state and local law.

Upon execution of the lease, the tenant will be required pay the amount of monthly tenant rent (known as the alternative non-public housing rent) determined by COC in accordance with HUD regulations. COC will comply with state and local law in giving the tenant written notice stating any changes in the amount of tenant rent. Charges assessed under the lease will be due in accordance with state and local law.



## **PART III: TERMINATION BY COC – OTHER AUTHORIZED REASONS**

### **13-III.A. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]**

#### ***Definitions [24 CFR 5.100]***

The following definitions will be used for this and other parts of this chapter:

*Affiliated individual* is defined in section 16-VII.B.

*Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

*Dating violence* is defined in section 16-VII.B.

*Domestic violence* is defined in section 16-VII.B.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug, which include medical marijuana, with the intent to manufacture, sell, distribute, or use the drug.

*Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

*Household* means the family and COC-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

*Other person under the tenant's control* means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

*Premises* means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

*Sexual assault* is defined in section 16-VII. B.

*Stalking* is defined in section 16-VII.B.

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

## **Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]**

### COC Policy

**COC will terminate the lease for drug-related criminal activity, which include medical marijuana, engaged on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged on or off the premises by any other person under the tenant's control.**

**COC will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.**

**A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.**

**In making its decision to terminate the lease, COC will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, COC may, on a case-by-case basis, choose not to terminate the lease.**

## **Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]**

### COC Policy

**COC will terminate the lease when COC determines that a household member is illegally using a drug, which includes medical marijuana, or COC determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.**

**A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.**

**COC will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.**

**A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.**

**In making its decision to terminate the lease, COC will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, COC may, on a case-by-case basis, choose not to terminate the lease.**

## **Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]**

### COC Policy

**COC will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including COC management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.**

***Immediate vicinity* means within a three-block radius of the premises.**

**COC will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.**

**A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.**

**In making its decision to terminate the lease, COC will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, COC may, on a case-by-case basis, choose not to terminate the lease.**

## **Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]**

### COC Policy

**COC will terminate the lease if COC determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.**

**A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.**

**COC will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.**

**A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.**

**In making its decision to terminate the lease, COC will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, COC may, on a case-by-case basis, choose not to terminate the lease.**

**Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]**

COC Policy

**COC will terminate the lease if COC determines that a household member has furnished false or misleading information concerning illegal drug use, which includes medical marijuana, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.**

**COC will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.**

**In making its decision to terminate the lease, COC will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, COC may, on a case-by-case basis, choose not to terminate the lease.**

**Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]**

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed as serious or repeated violations of the lease by the victim or threatened victim [24 CFR 5.2005(c)(1)].

COC Policy

**COC will terminate the lease for the following violations of tenant obligations under the lease:**

**Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);**

**Repeated late payment of rent or other charges. Four late payments within a 12 month period shall constitute a repeated late payment.**

**Failure to fulfill the following household obligations:**

**Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.**

**Not to provide accommodations for boarders or lodgers**

**To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose**

**To abide by necessary and reasonable regulations promulgated by COC for the benefit and well-being of the development and the tenants; which shall be posted in the property management office and incorporated by reference in the lease**

**To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety**

**To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition**

**To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner**

**To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators**

**To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project**

**To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the property (including damages to buildings, facilities or common areas) caused by the tenant, a member of the household or a guest**

**To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition**

**In making its decision to terminate the lease, COC will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, COC may, on a case-by-case basis, choose not to terminate the lease.**

**13-III.B. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]**

**Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]**

HUD regulations state that the PHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the PHA to only those examples. The Violence against Women Act prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking as “other good cause” for terminating the assistance, tenancy, or occupancy rights of the victim or threatened victim of such violence [see 24 CFR 5.2005(c)(1)].

COC Policy

**COC will terminate the lease for the following reasons.**

***Fugitive Felon or Parole Violator.* If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.**

***Persons subject to lifetime sex offender registration requirement.* If any member of the household has, during their current public housing tenancy, become subject to a lifetime registration requirement under a state sex offender registration program.**

**Discovery of facts after admission to the program that would have made the tenant ineligible**

**Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with a reexamination of income**

**Failure to furnish such information and certifications regarding family composition and income as may be necessary for COC to make determinations with respect to rent, eligibility, and the appropriateness of the dwelling unit size**

**Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by COC that such a dwelling unit is available**

**Failure to permit access to the unit by COC after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists**

**Failure to promptly inform COC of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 30 business days of the event.**

**Failure to abide by the provisions of COC pet policy**

**If the family has breached the terms of a repayment agreement entered into with COC**

**If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.**

**If a household member or their guest has engaged in or threatened violent or abusive behavior toward COC personnel or contracted vendors**

***Abusive or violent behavior towards COC personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.**

***Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.**

**In making its decision to terminate the lease, COC will consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, COC may, on a case-by-case basis, choose not to terminate the lease.**

***Family Absence from Unit [24 CFR 982.551(i)]***

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the PHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

COC Policy

**The family must supply any information or certification requested by COC to verify that the family is living in the unit, or relating to family absence from the unit, including any COC-requested information or certification on the purposes of family absences. The family must cooperate with COC for this purpose.**

**The family must promptly notify COC when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case promptly means within 10 business days of the start of the extended absence.**

**If a family is absent from the public housing unit for more than 180 consecutive days, and the family does not adequately verify that they are living in the unit, COC will terminate the lease for other good cause.**

***Abandonment of the unit.* If the family appears to have vacated the unit without giving proper notice, COC will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, COC will secure the unit immediately to prevent vandalism and other criminal activity.**



### **13-III.C. ALTERNATIVES TO TERMINATION OF TENANCY**

#### **Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]**

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that COC may consider exclusion of the culpable household member. Such an alternative can be used for any other reason where such a solution appears viable in accordance with COC policy.

Additionally, under the Violence against Women Act, COC may bifurcate a lease in order to terminate the tenancy of an individual who is a tenant or lawful occupant of a unit and engages in criminal activity directly related to domestic violence, dating violence, sexual assault, stalking,. Or human trafficking.

#### COC Policy

**COC will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.**

**As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon COC request.**

#### **Repayment of Family Debts**

#### COC Policy

**If a family owes amounts to COC, as a condition of continued occupancy, COC will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from COC of the amount owed. See Chapter 16 for policies on repayment agreements.**

### 13-III.D. CRITERIA FOR DECIDING TO TERMINATE TENANCY

#### Evidence [24 CFR 982.553(c)]

For criminal activity, HUD permits COC to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

#### COC Policy

**COC will use the preponderance of the evidence as the standard for making all termination decisions.**

***Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.**

## **Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]**

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that COC may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

### COC Policy

**COC will consider the following facts and circumstances before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:**

**The seriousness of the offending action, especially with respect to how it would affect other residents' safety or property**

**The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in section 13-III.F) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking**

**The effects that the eviction will have on other family members who were not involved in the action or failure to act**

**The effect on the community of the termination, or of COC's failure to terminate the tenancy**

**The effect of COC's decision on the integrity of the public housing program**

**The demand for housing by eligible families who will adhere to lease responsibilities**

**The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action**

**The length of time since the violation occurred, including the age of the individual at the time of conduct, as well as the family's recent history, and the likelihood of favorable conduct in the future**

**While a record of arrest(s) will not be used as the basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider:**

**Any statements made by witnesses or the participant not included in the police report**

**Whether criminal charges were filed**

**Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal**

**Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity**

**Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.**

**In the case of program abuse, \$5,000 of the underpaid rent and whether or not a false certification was signed by the family**

### **Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]**

#### COC Policy

**In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, COC will consider whether such household member has successfully completed a supervised drug or alcohol rehabilitation program.**

**For this purpose COC will require the tenant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program.**

### **Reasonable Accommodation [24 CFR 966.7]**

#### COC Policy

**If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, COC will determine whether the behavior is related to the disability. If so, upon the family's request, COC will determine whether alternative measures are appropriate as a reasonable accommodation. COC will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination. See Chapter 2 for a discussion of reasonable accommodation.**

### **Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]**

COC's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

### **13-III.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, OR HUMAN TRAFFICKING**

This section addresses the protections against termination of tenancy that the Violence against Women Act (VAWA) provides for public housing residents who are victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking. For general VAWA requirements and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this ACOP, where definitions of key VAWA terms are also located.

#### **VAWA Protections against Termination [24 CFR 5.2005(c)]**

VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant on the basis or as a direct result of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as serious or repeated violations of the lease by the victim or threatened victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1), FR Notice 8/6/13]

Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA [FR Notice 1/4/23].

## **Limits on VAWA Protections [24 CFR 5.2005(d) and (e), FR Notice 8/6/13]**

While VAWA prohibits COC from using domestic violence, dating violence, sexual assault, stalking, or human trafficking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute.

Specifically:

- VAWA does not limit COC's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, sexual assault, stalking, or human trafficking providing that COC does not subject the victim to a more demanding standard than the standard to which it holds other tenants.
- VAWA does not limit COC's authority to terminate the tenancy of any public housing tenant if COC can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In order to demonstrate an actual and imminent threat, COC must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize COC to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat, including but not limited to transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat" [24 CFR 5.2005(d)(3)]. Additionally, HUD regulations state that restrictions "predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents" [24 CFR 5.2005(d)(3)].

### COC Policy

**In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking is an actual and imminent threat to other tenants or those employed at or providing service to a property, COC will consider the following, and any other relevant, factors:**

**Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, stalking, or human trafficking**

**Whether the threat is a physical danger beyond a speculative threat**

**Whether the threat is likely to happen within an immediate time frame**

**Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat**

**If the tenant wishes to contest COC's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.**

#### **Documentation of Abuse [24 CFR 5.2007]**

##### COC Policy

**When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, stalking, or human trafficking claims protection under VAWA, COC will request in writing that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this ACOP.**

**The Executive Director/CEO or his/her designee reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases COC will document the waiver in the individual's file.**



## **Terminating or Evicting a Perpetrator of Domestic Violence**

Although VAWA provides protection from termination for victims of domestic violence, it does not provide such protection for perpetrators. In fact, VAWA gives COC the explicit authority to bifurcate a lease, or remove a household member from a lease, “in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing” [FR Notice 8/6/13]. Moreover, HUD regulations impose on COC the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, stalking, or human trafficking [see 24 CFR 966.4(e)(9)].

Specific lease language affirming COC’s authority to bifurcate a lease is not necessary, and the authority supersedes any local, state, or federal law to the contrary. However, if COC chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance. This means that COC must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [FR Notice 3/16/07]. COC must not initiate eviction procedures until 30 days after the lease bifurcation [Notice PIH 2017-08].

### COC Policy

**COC will bifurcate a family’s lease and terminate the tenancy of a family member if COC determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, non-culpable family members.**

**In making its decision, COC will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to COC by the victim in accordance with this section and section 16-VII.D. COC will also consider the factors in section 13.III.E. Upon such consideration, COC may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.**

**If COC does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If the person removed from the lease was the only tenant eligible to receive assistance, the PHA must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, the PHA must provide the tenant reasonable time to find new housing or to establish eligibility for another housing program covered by VAWA 2013.**

## **PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING**

### **13-IV.A. OVERVIEW**

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

### **13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]**

#### COC Policy

**COC may conduct criminal records checks on all adult household members on an annual basis, including sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.**

COC may not pass along to the tenant the costs of a criminal records check.

### **13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]**

#### COC Policy

**In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, COC will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.**

**The family will be given 10 business days from the date of COC notice, to dispute the accuracy and relevance of the information. If the family does not contact COC to dispute the information within that 10 business day period, COC will proceed with the termination action.**

**Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.**

### **13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]**

#### **Form, Delivery, and Content of the Notice**

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine COC documents directly relevant to the termination or eviction. If COC does not make the documents available for examination upon request by the tenant, COC may not proceed with the eviction [24 CFR 966.4(m)].

COC is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with COC's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When COC is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by COC for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of COC, or for a drug-related criminal activity on or off the premises.

#### COC Policy

**COC will deliver notices of lease termination by first class mail.**

**All notices of lease termination will include a copy of the forms HUD-5382 and HUD-5380 to accompany the termination notice. Any tenant who claims that the cause for termination involves domestic violence, dating violence, sexual assault, stalking, or human trafficking of which the tenant or affiliated individual of the tenant is the victim will be given the opportunity to provide documentation in accordance with the policies in sections 13-III.F and 16-VII.D.**

**Timing of the Notice [24 CFR 966.4(l)(3)(i)]**

COC must give written notice of lease termination of:

COC Policy

**COC will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations COC will give 30 days written notice or, if state or local law allows less than 30 days, such shorter notice will be given.**

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

**Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]**

COC Policy

**If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.**

**If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.**

### **Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with COC either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for COC's informal hearing procedures.

### **13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]**

#### COC Policy

**When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, COC will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.**

**If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, COC will seek the assistance of the court to remove the family from the premises as per state and local law.**

COC may not proceed with an eviction action if COC has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

### **13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]**

When COC evicts an individual or family for criminal activity, including drug-related criminal activity, COC must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

### **13-IV.G. RECORD KEEPING**

For more information concerning general record keeping, see Chapter 16.

#### COC Policy

**A written record of every termination and/or eviction will be maintained by COC at the development where the family was residing, and will contain the following information:**

**Name of resident, number and identification of unit occupied**

**Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently**

**Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)**

**Date and method of notifying the resident**

**Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions**